IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7088 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI G VANZARA

Versus

VIJAYA CO-OP BANK LTD

Appearance:

MR MB GANDHI for Petitioner

MR GHANSHYAM AMIN for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 11/02/2000

ORAL JUDGEMENT

This petition is filed against the judgment and order passed by the Gujarat Cooperative Tribunal in Appeal No.382 of 1987 on September 27,1988.

2. It appears that a Lavad Suit was filed against

the petitioner and ex-parte award was passed by the Board of Nominee September 30,1986. Being aggrieved by the award, he preferred an appeal before the Gujarat Cooperative Tribunal, which was time barred. It was the case of the appellant that though the award was dated September 30,1986, he came to know about the award only when a notice was served upon him by Recovery Officer on June 18,1987. The tribunal in these circumstances held that even if the said date is to be taken into account, then also there was delay of 188 days and it was not properly explained. The appeal was therefore, dismissed only on the ground that it was time barred and delay was not properly explained.

3. Rule was issued and ad interim relief in terms of para 10 (B) of the petition i.e. stay against the implementation and execution of the award was granted. When the matter was placed for hearing on interim relief I passed the order on November 22, 1999, by modifying ad interim relief granted earlier to the extent that the petitioner was directed to deposit an amount of Rs.20,000/- with the respondent-Bank on or before December 31, 1990. Learned counsel for the petitioner states that the said amount of Rs.20,000/- as per the order of the Court has been deposited. Today, the matter is called out for final hearing.

4. Mr. Gandhi, learned counsel for the petitioner submitted that an error of law and of jurisdiction has been committed by the Cooperative Tribunal in not entertaining the appeal and dismissing the same only on the ground of limitation. He submitted that delay of 188 days could not, in the facts and circumstances of the case, be said to be unreasonable. He also submitted that the tribunal ought to have considered the fact that the award was ex-parte and in these circumstances, the tribunal ought to have afforded hearing on merits. No doubt, he also prayed this Court to set aside not only the order passed by the tribunal but also ex-parte award passed by the Board of Nominees. He, therefore, submitted that the petition deserves to be allowed and the orders passed by both the authorities deserve to be set aside.

5. Mr. Amin, who appears on behalf of the respondent, on the other hand supported the order passed by the tribunal. He submitted that there was considerable delay on part of the petitioner not only before the Cooperative Tribunal, but also before the Board of Nominees which reflects in the order passed by the tribunal. He, therefore, submitted that this is not a fit case to exercise discretion in favour of the

petitioner. He also urged that even if this Court is of the view that delay deserves to be condoned, ex-parte award may not be set aside, since the award was passed because though the petitioner was issued summons, he remained absent. Finally, he submitted that in the facts and circumstances of the case, the fact may be taken into account that an award was passed by the Board of Nominees for an amount of Rs.52,820=35 as early as on September 30,1986, with 20 % interest, and, hence, as on today, a substantial amount is due and payable by the petitioner to the respondent-Bank and an appropriate order may be passed directing the petitioner to deposit more amount before the appeal can be heard on merits.

6. Having considered the rival contentions, in my opinion, interest of justice would be served if the petition is allowed partly. So far as ex-parte award passed by the Board of Nominees is concerned, in my opinion, in the present proceeding the same cannot be set aside. At the same time, however, it is true that according to the tribunal, there was delay of 188 days. In my view, therefore, the delay could have been condoned by the tribunal by granting an opportunity of hearing on merits to the petitioner. I, therefore, pass the following order.

7. The order passed by Cooperative Tribunal in Appeal No.382 of 1987 is set aside and the tribunal is directed to hear the appeal on merits, but on condition that the petitioner deposits an additional amount of Rs.30,000/- (Rupees Thirty Thousand Only) on or before April 30,2000. This is on a statement being made on behalf of learned counsel for the petitioner that the order passed on November 22, 1990 has been complied with and the petitioner has deposited an amount of Rs.20,000/-. If such an amount is not deposited, the same also will be deposited on or before April 30, 2000. If the amount which is ordered to be deposited by this order, is not deposited within stipulated period, the petition shall stand dismissed and the tribunal will not hear the matter on merits. If the amount is deposited, the tribunal will condone delay and will hear the appeal on merits and pass an appropriate order on merits of the case after giving an opportunity of hearing to the parties. Since the matter is very old and the respondent is a Bank, the tribunal is directed to dispose of the appeal as expeditiously as possible preferably on or before 30-9-2000. The appeal is accordingly allowed. Rule made absolute to the aforesaid extent. No order as to cost. I may state that since I am not entering into merits of the matter, the tribunal will decide the appeal

on its own merits without being influenced by observations made by me in this order.

11-2-2000 (C.K.Thakkar, J.)

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